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Arso Radio Corporation
P.O. Box 487
Caguas, PR 00726

In re: WRIO(FM), Ponce, PR
Facility ID# 20591
Arso Radio Corporation
BPH-20040623AAC

Dear Applicant:

This letter is in reference to the above-captioned minor change application to change antenna height and location. WRIO also requests waiver of the minimum spacing requirement provisions of 47 C.F.R. § 73.207. For the reasons stated below, we deny WRIO's waiver request and dismiss the application.

Waiver Request

An engineering review of the application reveals that the facility site specified in the application fails to meet the minimum spacing requirement of 47 C.F.R. § 73.207 with respect to second-adjacent channel Class B license (BLH-19990915AVO) for WXYX(FM), Bayamón, PR. Specifically, the proposed facility is short-spaced by 17 kilometers. The required spacing pursuant to 47 C.F.R. § 73.207 is 74 kilometers while the actual spacing proposed in the application is 57 kilometers. Moreover, WRIO's licensed facility is located 58 kilometers from WXYX. Thus, WRIO proposes to increase this existing short-spacing by one kilometer. WRIO recognizes this violation and requests waiver § 73.207.

In support of the waiver request, WRIO states that a hurricane destroyed its licensed facility and they are unable to rebuild due to the porous limestone terrain at the site.¹ WRIO claims that relocation to the proposed site would allow WRIO to have a more structurally sound tower less susceptible to weather-related structural failures. WRIO asserts that, although it increases the existing short-spacing by 0.8 kilometer, it will not cause or receive interference to WXYX. Moreover, it would eliminate the existing short-spacing to WKSA-FM, Isabela, PR. Furthermore, WRIO states that the contour protection provisions of § 73.215 are not available since the minimum distance required is 68 kilometers. Accordingly, WRIO concludes that waiver of § 73.207 is warranted in this instance.

¹ WRIO is currently operating with its licensed auxiliary facility (BXLH-20040317ADM).

Discussion

We have carefully considered all of the arguments submitted by WRIO and have concluded that the waiver request is inconsistent with Commission precedent. It is a longstanding Commission policy that three criteria must be met to justify waiver of § 73.207 spacing rules. In general, for a spacing waiver request of this magnitude to be granted, the applicant must show that (1) the present site is no longer suitable; (2) alternative, non-short spaced sites are unavailable; and (3) the proposed site is the least short-spaced of all suitable sites.² Even when these criteria are met, the applicant still must show that waiver of the spacing requirements would serve the public interest. WRIO has failed to fully address the three criteria for spacing waiver.³ Accordingly, the request for waiver of § 73.207 will be denied.

Conclusion

When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (quoting *Rio Grand Family Radio Fellowship, INC. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968) (per curiam)). We have afforded your waiver request the "hard look" called for under the *WAIT* Doctrine, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances set forth in the justification are sufficient to establish that granting waiver of 47 C.F.R. § 73.207 would be in the public interest.

Thus, the request for waiver of 47 C.F.R. § 73.207 IS HEREBY DENIED and application BPH-20040623AAC IS HEREBY DISMISSED as unacceptable for filing. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Anthony T. Lepore, Esq.
Jefferson G. Brock

² See e.g. *John Lamar Hill*, 70 FCC 2d 153 (Rev. Bd 1978); *Carol-Harrison Broadcasting, Inc.* 62 FCC 2d 45, 46 (1976) and *Townsend Broadcasting Corp.*, 62 FCC 2D 511, 512 (1976); and *Megamedia*, 67 FCC 2D 1527, 1528 (1978).

³ An engineering analysis of the existing towers in the area revealed that there are three registered towers (ASR#: 1011530, 1059084, and 1062860) that comply with the Commission's Rules.